IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6487 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE K.M.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PAYAL TEXTURISERS PVT LTD.

Versus

DEVELOPMENT COMMISSIONER

Appearance:

1. Special Civil Application No. 6487 of 2002
MR PARESH M DAVE for Petitioner No. 1-2
NOTICE SERVED BY DS for Respondent No. 1
MR DN PATEL for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE K.M.MEHTA

Date of decision: 22/11/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

Rule. Service of rule is waived by Shri D.N. Patel, learned Sr. Central Government Standing Counsel, for the respondent authorities.

2. The petitioners have challenged the validity of the order dated 27/28th May 2002 passed by respondent No. 1. By virtue of the impugned order, the Letter of Permission bearing No. KFT/100%/EOU/II/768/00-01/4268 dt. 24.8.2000 and Green Card No. KFTZ/418/2000-01 dated 12.9.2000 issued to the petitioners have been suspended with immediate effect.

3. It is the case of the petitioners that before passing the impugned order of suspension, the petitioners were not given sufficient opportunity to represent their case. Learned advocate Shri P.M. Dave has drawn our attention to the contents of the show-cause notice dated 22/23rd April 2002, which is at Annexure 'C' to the petition. He has submitted that respondent No. 1 has referred to a report received by him from the Commissioner of Central Excise and Customs, but a copy of the said report was not given to the petitioners, though demanded. It has been submitted by the learned advocate that without a copy of the report, it was difficult for the petitioners to defend themselves. The case against the petitioners in the show-cause notice was to the effect that the goods, which were supposed to be exported by the petitioners, had in fact not been exported. The petitioners were supposed to export the goods either by themselves or through some merchant exporters. The case of the petitioners appear to be that they had sold the goods to merchant exporters so as to enable them to export the same but the merchant exporters might not have exported the goods and for that purpose the petitioners cannot be made responsible. As a matter of fact, the petitioners wanted to ascertain as to which consignment was not exported by the concerned merchant exporter, but as the said information had not been given to the petitioners, the petitioners could not effectively represent their case before respondent No. 1 and the impugned order of suspension of licence, etc. had been passed by respondent No. 1.

4. In pursuance of notice issued by this court, learned Sr. Standing Counsel Shri D.N. Patel has appeared and has also placed on record an affidavit-in-reply filed by respondent No. 2. It is the

case of the respondents that necessary and relevant details had been given to the petitioners in the show-cause notice. Further details have also been given in the affidavit-in-reply, which has been filed by respondent No. 2. It has been vehemently submitted by Shri Patel that a fraud has been committed either by the petitioners or by the merchant exporters by not exporting the goods, which were supposed to be exported. According to him, the State exchequer has substantially suffered on account of non-receipt of duties under different heads.

5. Upon hearing the learned advocates, it cannot be disputed that the report, which has been referred to in the show-cause notice, has not been given to the petitioners. Prima facie, we feel that without complete details of the goods which had not been exported by the merchant exporters, it was difficult for the petitioners to represent their case before respondent No. 1.

6. In view of the above facts, we direct that the respondent authorities shall give a copy of the report referred to in the show-cause notice within a period of one week from today to petitioner No. 1 and within two weeks from the date of receipt of the report, the petitioners shall submit their reply to respondent No. 1 and respondent No. 1 shall also give personal hearing to a representative of petitioner No. 1.

7. After hearing the representative of petitioner No. 1 and upon perusal of the reply, which might be given by the petitioners, respondent No. 1 shall take a final decision within two weeks from the date of personal hearing in the mater. If, after hearing the concerned representative of petitioenr No. 1 and upon perusal of the reply given by the petitioners, respondent No. 1 comes to a conclusion that the impugned order of suspension requires to be modified, he shall modify the same. It would be open to him to confirm the said order by giving reasons and if he is satisfied that the petitioners have made out a case for not taking any action against the petitioners, the impugned order of suspension shall be cancelled by respondent No. 1.

8. In view of the above direction, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs. Direct service permitted.

(A.R. Dave, J.) (K.M. Mehta, J.)
(hn)